

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1033 of 2017

Arising Out of PS.Case No. -59 Year- 2010 Thana -BARHAT District- JAMUI

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Kishori Pandit son of Late Baldeo Pandit resident of village Numar P.S.
Barahat Dist. Jamui

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prakash Mahto

For the Respondent/s : Mr. Mayanand Jha

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

8 20-06-2018

1. Heard learned counsel appearing for the appellant,
learned Additional Public Prosecutor for State as well as learned
counsel appearing for respondents on the point of admission.

2. In our view, this appeal can be disposed of on
admission stage itself.

3. The appellant, being informant of Barahat P. S.
Case No. 59 of 2010, challenged the impugned judgment dated 17-
06-2017 passed by learned Additional Sessions Judge, FTC I,
Jamui in Session trial No. 114 of 2011 by which and where under
he convicted the respondent nos. 2 to 5 under sections 324/34 and
323/34 of Indian Penal Code but acquitted them of the offences



punishable under sections 341/34, 325/34 and 307/34 IPC and furthermore, the learned trial Court released the respondent nos. 2 to 5 on execution of probation bond of Rs. 1,000/- with one surety of like amount for keeping good conduct for a period of one year.

4. The grievance of the appellant is that there was sufficient materials on record to convict the respondent nos. 2 to 5 for the offences punishable under section 307 of the Indian Penal Code but instead of convicting the respondent nos. 2 to 5 for the above stated offence of section 307 of the Indian Penal Code, the learned Trial Court acquitted them without considering the materials available on the record.

5. Learned counsel appearing for the appellant submitted that the learned Trial Court has passed a very cryptic judgment and has not discussed the evidences available on the record. He, further, submitted that the learned Trial Court acquitted the respondent nos. 2 to 5 of the charge framed under section 307 of the Indian Penal Code, only taking note of injury sustained by the injured person but failed to take note of other circumstances. He further, submitted that, however, wrong consideration of evidence is excusable whereas non-consideration of the evidence is not excusable and in the present case, the learned Trial Court has not considered the evidences available on the record.



6. On the other hand, learned counsel appearing for the respondent nos. 2 to 5 supported the impugned judgment arguing that the learned Trial Court has considered the evidences available on the record, though he has passed a very cryptic judgment. He further, submitted that in the present case the informant sustained injury which was not dangerous to his life and that was the reason, learned Trial Court acquitted the respondent nos. 2 to 5 of the charges framed under section 307 of the Indian Penal Code. He, further, submitted that it was a good case for acquittal but in stead of acquitting respondent nos.2 to 5, trial court convicted them for the offences punishable under sections 324/34 and 323/34 IPC. He, further, submitted that respondent nos.2 to 5 did not file any appeal against the impugned judgment as they had released on execution of bond.

7. From perusal of the impugned judgment, we find that the learned Trial Court has passed a very cryptic judgment without considering the evidences available on the record. Furthermore, the learned trial court, while acquitting the respondent nos. 2 to 5 of the charges under section 307 of the Indian Penal Code, has taken only the nature of injury and failed to take notice of other circumstances. It is well said principle of law that to constitute an offence under section 307 of the Indian Penal



Code, it is not essential that there must be an injury. Therefore, in the aforesaid circumstances, we are of the view that the impugned judgment can not sustain in the eye of law and accordingly, we have no option except to set aside the impugned judgment dated 17-06-2017 and remit the matter to the Trial Court for passing fresh judgment in accordance of law after hearing both parties afresh.

8. Accordingly, this criminal appeal is allowed and the impugned judgment dated 17.6.2017 passed in Barahat P. S. Case No. 59 of 2010 is, hereby, set aside and case is remitted to the court below with direction to pass a fresh judgment in accordance with law after giving opportunity of hearing to the concerned parties. The trial court shall pronounce the judgment within one month from the date of appearing of both parties and it is made clear that this order shall not cause any prejudice to the court below while delivering fresh judgment. Respondent nos.2 to 5 shall appear before the trial court by 18.07.2018 and if they do so, trial court shall pass appropriate order in accordance with law.

9. Let lower court record be sent to the court below forthwith.

(Hemant Kumar Srivastava, J)

Shahid/- Rajeev

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(Rajendra Kumar Mishra, J)

